

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
DA 94-895

FCC MAIL SECTION

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In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Lakeland in the Tampa-
St. Petersburg-Clearwater, Florida
Television Market

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CS Docket No. 94-95

DISPATCHED BY

NOTICE OF PROPOSED RULE MAKING

Adopted: August 12, 1994

Released: August 15, 1994

Comment Date: September 14, 1994

Reply Comment Date: October 14, 1994

By the Chief, Cable Services Bureau:

1. Before the Commission is a petition for rule making filed by Public Interest Corporation, the licensee of television station WTMV(TV), Channel 32, Lakeland, Florida, to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to add the community of Lakeland to the Tampa-St. Petersburg-Clearwater television market.¹

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators.² Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.³ Market hyphenation "helps equalize competition" where portions of the market are located

¹ See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n. 150 (1993).

² See 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f).

³ See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. ⁴

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete." ⁵

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992, ⁶ which amended Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition. ⁷

⁴ See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

⁵ See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

⁶ Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷The Commission has delegated authority to the staff to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd at 2977-78, n. 50 (1993).

THE PETITION

5. According to the petitioner, Lakeland is located 31 miles from Tampa, which is described as the principal city in the market, 47 miles from St. Petersburg, and 50 miles from Clearwater. Lakeland is said to be located inside the Tampa-St. Petersburg Arbitron Area of Dominant influence ("ADI") and to have shared economic, social and cultural interests with the other named communities in the market which link these communities together as a single television market. It attaches maps of its city grade, Grade A and Grade B contours and of the Grade B signal coverage contours of the other stations in the market. These show that its city grade contour encompasses part of and its Grade A contour encompasses substantially all of Tampa; its Grade B contour encompasses all of St. Petersburg; and the signal contours of all of the stations in the market substantially overlap with its. Newspaper program listings, it is said, recognize WTMV(TV) as a Tampa market station, program suppliers charge it rates for programming which recognize that WTMV(TV) is an integral part of the Tampa ADI, and national advertisers buy time on WTMV(TV) is recognition of its status as a station in the Tampa market.

6. Petitioner further states that, although WTMV(TV) is unavoidably competitive with the other market-area stations, it is disadvantaged in this competition by having to compete with other stations in the market without comparable cable television carriage rights. Although it is entitled to carriage on area cable systems by virtue of its inclusion in the Tampa-St. Petersburg ADI,⁸ because Lakeland is not a designated community in the Section 76.51 market listings, it is considered a "distant signal" for purposes of compulsory copyright license liability if carried on certain cable systems in the ADI.⁹ As a result, petitioner states, it faces additional copyright fees attendant to its carriage as a "distant signal"¹⁰ that could run

⁸ See Section 76.56(b) of the Commission's Rules.

⁹ Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market. The absence of Lakeland as a designated community in this market list generally results in WTMV(TV)'s classification as a "distant signal" for market-area cable systems more than 35 miles from Lakeland. By amending Section 76.51 of the Rules to include the community of Lakeland in the market as proposed, the petitioner asserts that market-area cable systems will be able to carry its signal on an equal basis with other stations in the market without incurring distant signal liability.

¹⁰ Section 76.58(d) of the Commission's Rules required a cable operator to notify all local television stations by May 3, 1993, that they may not be entitled to mandatory carriage on the system because such carriage may cause an increased copyright liability to the cable system. Under the provisions of Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C.

"into the millions of dollars."

DISCUSSION

8. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Tampa, St. Petersburg, Clearwater, and Lakeland do compete for audiences and advertisers throughout much, if not most, of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to a market designation and the market as a whole. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Lakeland to the Tampa-St. Petersburg-Clearwater, Florida television market.

ADMINISTRATIVE MATTERS

Ex Parte Rules – Non-Restricted Proceeding

10. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 14, 1994, and reply comments on or before October 14, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

§111) and the station does not agree to indemnify the cable operator for the increased copyright liability. See *Report and Order* in MM Docket 92-259, *supra*, at 2973-74.

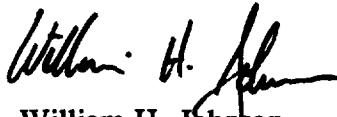
Initial Regulatory Flexibility Analysis

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this **Notice of Proposed Rule Making**, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Additional Information

13. This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules. For additional information on this proceeding, contact William H. Johnson (202) 416-0856.

FEDERAL COMMUNICATIONS COMMISSION



William H. Johnson
Acting Chief, Cable Services Bureau